55TH CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 1502.

SOLDIERS AS VOTERS IN CONGRESSIONAL ELECTIONS.

JUNE 3, 1898.—Referred to the House Calendar and ordered to be printed.

Mr. SAMUEL W. SMITH, from the Committee on Election of President, Vice-President, and Representatives in Congress, submitted the following

REPORT.

[To accompany H. R. 10550.]

The Committee on Election of President, Vice-President, and Representatives in Congress, having had under consideration House bill No. 10550, recommend the passage of the same, with the following amendments:

In line 4, section 1, strike out the words "with the Kingdom of Spain."

In line 11, page 3, after the word "that" insert "the electors in."

Also at the end of section 8, add the following words: "and the officers of such regiments, batteries, and detached companies are hereby directed to afford all possible facilities for carrying out the purposes of this act."

The justice and propriety of permitting our citizen soldiers in the field to exercise their civil rights as voters during their military service will be conceded by all. Our policy as a nation has been to call upon the citizen to perform duty as a soldier at any time when his service may be needed. To deny him the right to vote while performing such duty would deprive many of the best of our citizens of all participation in civil government.

Congress has no power to regulate or authorize the holding of elections for State or county officers, and therefore the proposed bill is limited in its effect to Congressional elections only.

Section 4 of Article I of the Constitution of the United States reads as follows:

SEC. 4. The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to places of choosing Senators.

The various States have by law provided for times, places, and manner of holding all elections, including those of Representatives in Congress.

The section above quoted authorizes Congress to make or alter such regulations. Under this authority Congress might lawfully, as to time,

place, and manner of holding Congressional elections, provide for an entire and complete Federal system, and having this power, the greater includes the less, and therefore Congress may constitutionally modify such regulations in part.

The proposed bill only attempts to modify or alter the State laws in one particular, and that is as to the time, place, and manner by which the soldiers in the field may vote.

These soldiers do not lose their actual right to vote by their enlistment and muster into the United States service. They might obtain furloughs and return to their homes at any election and there cast their ballots the same as any other citizen. The fact of their voting, then, must depend upon a practicable place and manner only, and hence is within the constitutional power of Congress, so far as Congressional elections are concerned.

During the war of 1861–1865 many of the States provided by law for holding elections in the field, but no Congressional legislation was enacted on the subject. The validity of these State laws was decided variously, dependent upon the terms of the constitutions of different States.

In Pennsylvania the State law was held invalid because the constitution of the State required that the offer to vote should be "in the election district of the voter's residence." (Chase *v.* Miller, 41 Pa. St., 403.)

A like provision in the constitution of California was held to invalidate the soldier election law of that State. (Bourland *v.* Hildreth, 26 Cal., 161.)

So also in Connecticut. (Opinion of judges, 30 Conn., 591.)

In Iowa a soldiers' voting law was enacted and was held to be valid, because there was no limitation as to the place of voting by the terms of the State constitution. (Morrison *v.* Springer, 15 Iowa, 304.)

The supreme court of Ohio, in Lehman *v.* McBride (15 Ohio State Rep., 573), held such law valid.

The supreme court of New Hampshire, in a judicial opinion given to the legislature, held that a vote could not be cast by proxy, but did not attempt to hold that the vote might not be cast in person by the elector outside the State under a law framed for that purpose. (2 Am. Law Reg., N. S., 740.)

The supreme court of Wisconsin has decided the question substantially the same as the supreme court of Iowa, holding the military suffrage law valid. (Chandler *v.* Main, 16 Wis., 398.)

Judge I. F. Redfield, in a note in 13 American Law Reporter, 162, states the opinions of the supreme courts of Vermont and New Hampshire, as follows:

> The supreme court of Vermont, in a very carefully prepared and satisfactory opinion, held that where the restriction of the State constitution in regard to voting within the precinct of the residence of the elector was, in terms, limited to the casting of votes for State officers, and no such provision was found in that instrument in regard to voting for electors of President and Vice-President and Members of Congress, that it was competent for the legislature to provide for taking the votes of the electors for such officers without the limits of the State.
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> And subsequently the supreme court of New Hampshire adopted the same view in regard to the constitution of that State, partly upon the authority of the decision in Vermont.

In Michigan, as to State officials, the election law was held to be in violation of the State constitution (Twitchell *v.* Blodgett, 13 Mich., 127). But this does not at all militate against the decision in Congress of Baldwin *v.* Trowbridge, because the latter question involved the con-

struction of the Constitution of the United States instead of that of Michigan.

In the case of Baldwin *v.* Trowbridge (2 Bartlett's Election Cases) the question as to the validity of such a State law arose in a Congressional contest. Mr. Trowbridge was entitled to hold the seat if the vote of the soldiers in the field could be lawfully counted for him. On the other hand, Mr. Baldwin was entitled to the seat if those soldiers' votes could not lawfully be counted.

The constitution of Michigan in terms provided that the voter should "reside in the township or ward where he offers to vote."

But, inasmuch as section 4 of Article I of the Federal Constitution provides that "the times, places, and manner of holding elections, etc., shall be prescribed in each State by the *legislature* thereof, etc," the Committee on Elections reported that as to Representatives in Congress the legislature had the right to "prescribe the time, place, and manner," and that such power having been expressly given by the Constitution of the United States to the State legislature could not be taken away by the State constitution, the Federal Constitution being paramount upon that question.

As the legislature has the primary right to "prescribe the time, place, and manner," and the Congress "may at any time by law make or alter such regulations," it follows that no provision of any State constitution can prevent the Congress from making or altering such regulations.

The report of the committee was approved by the action of Congress in the case of Baldwin *v.* Trowbridge (Congressional Globe, vol. 56, p. 845) by a vote of 108 to 30.

The power of Congress to make a regulation as to place and manner of holding Congressional elections, such as is contemplated in the present bill, has never been determined.

Laws regulating Federal elections have been held valid:

> It is not necessary that Congress, in making laws in relation to Representatives in Congress, should assume entire and exclusive control thereof. * * * Congress has supervisory power over the subject, and may either make entirely new regulations, or add to, alter, or modify the regulations made by the State. (Ex parte Siebold, 100 U. S., 371.)
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> The exercise of such power can properly cause no collision of regulations or jurisdiction, because the authority of Congress over the subject is paramount, and any regulations it may make necessarily supersede inconsistent regulations of the State. This is involved in the power to make or alter. (Ib.)

This case is conclusive upon the power of Congress to make partial regulations to supplement or aid the State laws in relation to Congressional elections.

Congress having called upon the States to send organized bodies of her citizens into the field it is in the power of the National Legislature to provide a method and define the places where these electors may exercise their right of citizenship as to the election of national Representatives.

It is against public policy that the very flower of our young citizens should be disfranchised by their own patriotism, and we believe that the proposed bill, as amended, should be promptly passed.